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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/243,568	02/03/1999	UWE SCHONROCK	BEIERSDORF-5	2664

7590

11/05/2002

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EXAMINER

ANDERSON, REBECCA L

ART UNIT

PAPER NUMBER

1626

DATE MAILED: 11/05/2002

29

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/243,568

Applicant(s)

SCHONROCK ET AL.

Examiner

Rebecca L Anderson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 26 August 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-26 and 28-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22-26 and 28-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claims 22-26 and 28-33 are pending in the instant application.

Claim Rejections - 35 USC § 103

Claims 22-26 and 28-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Inoue et al, JP 04099730, Inoue et al, JP 04099771, and shtikhande, et al, J. of Food Sci. The rejection is maintained for the reasons of record set forth in paper no. 24.

Response to Arguments

Applicant's arguments filed 26 August 2002 have been fully considered but they are not persuasive. Applicant argues that the browning of a cosmetic, dermatologic, or food composition cannot be equated, or viewed as being the same as the oxidation of the same. It is agreed that UV light alone will discolor organic compounds in the absence of oxygen, however this also is the oxidation of the organic compound since oxygen is not required to oxidize a compound, and oxygen need not be a part of the oxidized compound, since oxidation only requires increasing the positive valence of a molecule.. Nevertheless, since the oxidation of the composition is the result of the claimed method and not part of the method itself, e.g. the method steps, which is the inventive subject matter of the claim, this argument is not persuasive. The instant application claims a method that adds to a cosmetic or dermatologic composition an effective amount of one of an ascorbyl compound and ascorbic acid and an effective amount of a flavanoid, flavone, flavanol, etc., now narrowed to alpha-glycosylrutin, in order to inhibit or prevent oxidation of the composition. The prior art reference,

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specifically JP 04099730, also teaches the addition of ascorbic acid and their derivatives and flavanoid glycosides to cosmetic and food compositions. Thus the method and use of the compounds in cosmetic compositions is known in the art, and by necessity, it would be expected that these compounds would produce the desired results instantly claimed since they are well known antioxidants and the method steps are the same, i.e. adding ascorbic acid and flavanoid glycosides to cosmetic compositions. Thus, it would have been obvious to one of ordinary skill in the art to add the claimed compounds to a cosmetic or dermatologic composition given the teaching of the prior art references and the general state of the art at the time the invention was made.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Conclusion

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Rebecca L. Anderson whose telephone number is (703) 605-1157. Mrs. Anderson can normally be reached Monday through Friday 7:00AM to 3:30PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Joseph McKane, can be reached at (703) 308-4537.


Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone numbers are (703) 308-1235 and (703) 308-0196.

A facsimile center has been established. The hours of operation are Monday through Friday, 8:45AM to 4:45PM. The telecopier numbers for accessing the facsimile machine are (703) 308-4242, (703) 305-3592, and (703) 305-3014.



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